

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #12	CCRB Case #: 201804913	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/13/2018 10:00 AM	Location of Incident: § 87(2)(b)	Precinct: 121	18 Mo. SOL 12/13/2019	EO SOL 12/13/2019	
Date/Time CV Reported Wed, 06/13/2018 11:45 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/19/2018 11:09 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Edgardo Diaz	09558	948883	WARRSEC
2. DT3 Genaro Barreiro	308	950050	WARRSEC
3. DT3 Tina Stuart	03291	927973	WARRSEC
4. An officer			WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Carlos Corporan	3305	948813	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer damaged § 87(2)(b)'s property.	§ 87(2)(b)
B.POM Edgardo Diaz	Abuse: Police Officer Edgardo Diaz entered § 87(2)(b) in Staten Island.	§ 87(2)(b)
C.POM Edgardo Diaz	Abuse: Police Officer Edgardo Diaz damaged § 87(2)(b)'s property.	§ 87(2)(b)
D.POM Edgardo Diaz	Abuse: Police Officer Edgardo Diaz searched § 87(2)(b) in Staten Island.	§ 87(2)(b)
E.DT3 Tina Stuart	Abuse: Detective Tina Stuart searched § 87(2)(b) in Staten Island.	§ 87(2)(b)
F.DT3 Genaro Barreiro	Abuse: Detective Genaro Barreiro searched § 87(2)(b) in Staten Island.	§ 87(2)(b)

### Case Summary

§ 87(2)(b) filed this complaint with the IAB Command Center on June 13, 2018, generating log number 18-23023. The CCRB received this case on June 19, 2018.

On June 13, 2018, at approximately 10:00 a.m., PO Edgardo Diaz, Det. Genaro Barreiro, Det. Carlos Corporan, and Det. Tina Stuart from the Staten Island Warrant Squad went to § 87(2)(b)'s residence, located at § 87(2)(b) in Staten Island, regarding a bench warrant for § 87(2)(b)'s daughter, § 87(2)(b). An officer allegedly damaged § 87(2)(b)'s property (**Allegation A: Abuse of Authority, § 87(2)(g)**). Officers entered § 87(2)(b)'s backyard (**Allegation B: Abuse of Authority, § 87(2)(g)**). PO Diaz allegedly damaged § 87(2)(b)'s property (**Allegation C: Abuse of Authority, § 87(2)(g)**). Officers entered and searched § 87(2)(b)'s residence (**Within Allegation B: Abuse of Authority, § 87(2)(g)**). **Allegation D: Abuse of Authority, § 87(2)(g)**. Det. Stuart and Det. Barreiro allegedly searched inside the dresser drawers inside of the residence (**Allegations E and F: Abuse of Authority, § 87(2)(g)**). No arrests or summonses resulted from this incident.

A search for body-worn camera (BWC) footage yielded negative results. Also, additional searches for video footage yielded negative results. Therefore, no relevant video footage was located for this case.

### Findings and Recommendations

#### **Allegation A – Abuse of Authority: An officer damaged § 87(2)(b)'s property.**

§ 87(2)(b) alleged, in his sworn in-person statement, that he was working on his computer in his living room when he heard a knock at the front door. § 87(2)(b) did not open the door at this point, and after a few minutes he heard “crunching” at the door, which he clarified sounded like somebody trying to kick in the door and break into the house. § 87(2)(b) alleged that this action caused the wood on the front door to chip, and the doorjamb to be “out of whack.” § 87(2)(b) then heard banging at his side fence, though he did not see who did the banging. He alleged that whoever it was banged the lock on the fence inward to the point that it no longer closes properly. § 87(2)(b) was unable to attest any of these actions to a specific officer because he did not physically see a specific officer take these actions. § 87(2)(b) agreed to provide photo evidence of his property damage to the CCRB both during his in-person statement and during a follow-up phone call, but ultimately failed to provide such photos or any other evidence of property damage (Board Reviews 01 and 06).

§ 87(2)(b) § 87(2)(b)'s son who was present at the time of this incident, alleged in an unsworn phone statement that he heard officers knocking on the door “very hard,” but did not see which officer this was. He denied seeing officers interacting with the side fence, but believed that an officer damaged the top part of the fence by jumping over it since the fence remained locked but officers were in the backyard (Board Review 02).

§ 87(2)(b)'s nephew, was contacted via telephone by the CCRB but refused to participate in this investigation and provide a statement (Board Review 03).

PO Diaz testified that, upon arriving at § 87(2)(b) he observed that the front door of the residence had chipped wood and was “aesthetically damaged.” PO Diaz acknowledged knocking on the front door, but denied damaging the front door in any way. PO Diaz then went around to the side of the house to the back, acknowledging going through the fence. PO Diaz stated that the fence was already broken, as the gate to the fence was broken, ajar,

and was not properly affixed to the cement. PO Diaz denied intentionally or incidentally causing damage to any part of the house, and denied seeing another officer do so (Board Review 04).

During his CCRB interview, Det. Corporan acknowledged knocking on the front door and announcing his presence, but denied damaging the front door or seeing another officer do so and stated that there was no visible damage to the front door at the time of the incident. Det. Corporan initially testified that he did not recall the condition of the fence at the time of the incident, but later denied there being any damage to the fence. Det. Corporan denied damaging the door or fence, and denied any other officer doing so (Board Review 05).

Det. Stuart testified that she did not recall seeing any damage to the front door of the house, and did not recall if the house had a fence attached to it. Det. Stuart ultimately denied that either she or another officer damaged any of the aforementioned property (Board Review 07).

Det. Barreiro testified that he was unaware of the condition of the front door because he never approached it, but did not recall whether the house had a fence attached to it. Det. Barreiro denied damaging the front door or the fence, and denied seeing another officer do so (Board Review 08).

Because neither § 87(2)(b) nor § 87(2)(b) testified to specifically seeing which officer allegedly damaged the front door or the side fence, and because all of the officers denied damaging either object, Allegation A is being pleaded against an officer.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation B – Abuse of Authority: Police Officer Edgardo Diaz entered § 87(2)(b) in Staten Island.**

**Allegation D – Abuse of Authority: Police Officer Edgardo Diaz searched § 87(2)(b) in Staten Island.**

It is undisputed that PO Diaz was the investigating officer for an active bench warrant for § 87(2)(b) and that the warrant listed § 87(2)(b) as § 87(2)(b)'s residence. It is also undisputed that officers entered the backyard of the residence, and subsequently entered and searched § 87(2)(b) a private house.

As previously mentioned, § 87(2)(b) alleged in both his in-person statement and a follow-up phone call that he initially heard a knock at the front door but did not answer it, instead briefly looking out the window but not seeing anything. After a few minutes, § 87(2)(b) heard “crunching” at the door, which he clarified sounded like somebody trying to kick in the door and break into the house. § 87(2)(b) did not say anything through the door at this point because he believed it to be a general rule to not say anything when someone is breaking into a house. § 87(2)(b) then heard banging at his side fence, and then a noise coming from § 87(2)(b)'s bedroom. Upon entering § 87(2)(b)'s bedroom, he observed PO Diaz and PO Corporan through an open hole in the window where the air conditioner had been. The officers identified themselves as police officers, and § 87(2)(b) then heard more knocking at his front door. § 87(2)(b) opened the front door, and was shown a piece of paper that stated § 87(2)(b) had

demonstrated a “failure to appear.” The officers explained that they were there to look for § 87(2)(b) but § 87(2)(b) told the officers that she did not live there. All four officers then began walking into the residence on their own while § 87(2)(b) was standing in the threshold, so § 87(2)(b) stepped to the side because he did not want to block them since they had guns. All four officers searched the basement, and then § 87(2)(b) showed the officers the bathroom, the attic, and the bedrooms of the house (Board Reviews 01 and 06).

§ 87(2)(b) stated, in an unsworn phone statement, that after hearing the knocking at the front door, he looked out the window and saw officer in plainclothes. § 87(2)(b) J. § 87(2)(b) asked § 87(2)(b) “Could this be the cops? Why don’t we open up the door?” § 87(2)(b) replied, “No. If they were the cops, they would announce themselves.” § 87(2)(b) did not answer the door or respond to the knocking. After the air conditioner fell to the ground and § 87(2)(b) saw PO Diaz and PO Corporan, he told the officers, “Come around the front. I’ll let you in.” All of the officers – § 87(2)(b) alleged that there were six officers present – entered the residence and searched every room in the house, including under mattresses, behind couches, in the basement, and in the bedroom closets (Board Review 02).

As previously discussed, § 87(2)(b) refused to provide a statement to the investigation (Board Review 03).

PO Diaz testified that he received the warrant for § 87(2)(b) on June 9, 2018, and noted the following searches and investigative actions performed by him prior to this incident: During § 87(2)(b)’s arrest on June 2, 2018, she provided her address as § 87(2)(b). A TLO search, which was a database that checks utilities of a home, showed that § 87(2)(b) listed her address as § 87(2)(b). On both June 9, 2018 and June 13, 2018, the date of the incident, PO Diaz conducted searches for AIDED reports, 911 calls, 311 searches, criminal court searches, and § 87(2)(b), a summons, and a 911 call from 2010 all had § 87(2)(b) noting her address as § 87(2)(b).

Upon arriving at the location, PO Diaz knocked on the front door and announced himself as belonging to the Warrant Squad. He then heard someone from inside the house say, “Shh,” as PO Diaz had his ear pressed against the door. PO Diaz could hear the air conditioner running and saw shadows moving within the house from the window, leading him to know that someone was home. PO Diaz then heard the air conditioner get turned off, so he knocked louder to which there was no answer. PO Diaz then went around to the side of the house, which he accessed through the fence. PO Diaz looked through another window of the house and saw “human shadows” moving inside the home, but could not tell if the shadows resembled a male or a female. PO Diaz shone his flashlight into the home from the collapsible side panel from the improperly installed air conditioner and saw a human body with long hair, which he could not tell was a male or female, crouching near a door next to one of the mattresses. Once the air conditioner fell through the window, PO Diaz told the figure that he saw crouching, “I have a warrant for the location. I see you. If you don’t open the door, I’m going to come in through the window.” A male voice responded by saying either, “Alright, we’re coming out now,” or, “We’re gonna come out.” PO Diaz also heard § 87(2)(b) say, “Alright, I’ll open the door. Fuck.” PO Diaz then went back to the front of the house and spoke with § 87(2)(b) who stated, “She’s not here. I know who you’re looking for. She’s not here. Search, go.” PO Diaz, Det. Corporan, and Det. Barreiro entered the home while Det. Stuart remained outside. PO Diaz and the detectives searched the home in places where a body could hide, noting that they searched the bedrooms, kitchen, bathroom, underneath the beds, inside a dryer, in the basement, and the walls, which yielded negative results (Board Review 04).

PO Diaz's DD5s for this case note that, on June 9, 2018, searches were conducted via TLO (acronym definition not known) which showed § 87(2)(b) as § 87(2)(b)'s residence as of June 9, 2018. Also, the DD5s note that § 87(2)(b) arrest report show that § 87(2)(b) listed her address as § 87(2)(b) (Board Review 10).

Det. Corporan testified that both PO Diaz and Det. Barreiro went to the rear of the house upon arrival. Det. Corporan denied hearing anything coming from inside the house, and denied seeing any shadows coming from within the house. Det. Corporan and PO Diaz ultimately entered the house and searched it, but Det. Corporan did not recall where in the house he searched because he conducts warrant searches every day (Board Review 05).

Det. Stuart testified that PO Diaz did not hear a response upon knocking on the door, but Det. Stuart did not hear or see anything from inside the house at the time PO Diaz knocked. PO Diaz went to the rear of the house, and Det. Stuart believed that Det. Barreiro went with him. When § 87(2)(b) came to the door, he consented for the officers to come in and search the house, so PO Diaz and Det. Corporan entered the house while Det. Stuart and Det. Barreiro remained outside. Det. Stuart denied entering the residence at any point, and did not know the extent of what happened inside the house (Board Review 07).

Det. Barreiro testified that, upon arriving to the location, he and Det. Stuart went to the rear of the house while PO Diaz and Det. Corporan remained at the front. Det. Barreiro denied hearing any conversation from the front of the house, but believed PO Diaz briefly came to the rear of the house before going back to the front. Det. Barreiro did not observe and was not made aware of any interactions that occurred inside of the house, and denied ever entering the residence at any point (Board Review 08).

The investigation obtained the bench warrant for docket § 87(2)(b), which was issued on June 8, 2018 and was active at the time of the incident. The warrant notes § 87(2)(b)'s address as § 87(2)(b) (Board Review 17).

The investigation obtained photos of § 87(2)(b) which has a white fence along the side of the house separating the front of the house from the backyard (Board Review 11).

In order to effect the arrest with an arrest warrant, a police officer may enter a defendant's dwelling if he reasonably believes the defendant to be present. N.Y.S. Criminal Procedure Law, Section 120.80. Curtilage is extended to the area immediately surrounding a house and is awarded the same protection under law. United States v. Dunn, 480 U.S. 294 (1987). The proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. Id. (Board Reviews 12 and 13).

§ 87(2)(b), § 87(2)(g)

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**Allegation C – Abuse of Authority: Police Officer Edgardo Diaz damaged § 87(2)(b)'s property.**

§ 87(2)(b) alleged in both his in-person statement and follow-up phone call that he went into § 87(2)(b)'s bedroom after hearing the banging on the fence and saw the air conditioner pushed into the room, causing the air conditioner to break. § 87(2)(b) was unable to see which officer pushed the air conditioner in, however. As previously discussed, § 87(2)(b) agreed to provide photo evidence of his property damage to the CCRB both during his in-person statement and during a follow-up phone call, but ultimately failed to provide such photographs or any other evidence to document the property damage (Board Reviews 01 and 06).

§ 87(2)(b) alleged in an unsworn phone statement that PO Diaz pushed the air conditioner in § 87(2)(b)'s bedroom into the room, causing it to fall and break (Board Review 02). As previously discussed, § 87(2)(b) was contacted via telephone by the CCRB but refused to participate in this investigation and provide a statement (Board Review 03).

PO Diaz testified that, upon getting to the back of the house, PO Diaz observed the air conditioner in a window with the collapsible side panel broken and the air conditioner itself not properly installed and leaning onto one of the mattresses inside of the room. PO Diaz attempted to lower the collapsible side panel, but because the air conditioner was not properly installed, it fell onto a pile of clothes in the room. The air conditioner had no visible damage as a result of the fall (Board Review 04).

PO Diaz's memo book entry for this incident notes that he applied "slight pressure" to a window to see if the subject of the warrant was hiding, causing the air conditioner to fall (Board Review 09).

Det. Corporan did not recall if there was an air conditioner present at the house at the time of the incident, and denied seeing an officer damage an air conditioner (Board Review 05).

Det. Stuart did not recall any significance regarding an air conditioner at the house. Det. Stuart ultimately denied that either she or another officer damaged an air conditioner (Board Review 07).

Det. Barreiro denied damaging the air conditioner, and denied seeing another officer do so (Board Review 08).

Although all four officers denied damaging the air conditioner and neither civilian saw which officer allegedly pushed the air conditioner into the room, PO Diaz's memo book corroborates that his actions caused the air conditioner to fall out of the window. Therefore, Allegation C is being pleaded against PO Diaz.

While it is undisputed that the air conditioner ultimately fell out of the window and into the bedroom of the house, § 87(2)(g)

. Further, § 87(2)(b) failed to provide the investigation with any evidence to

§ 87(2)(g)

**Allegation E – Abuse of Authority: Detective Tina Stuart searched** § 87(2)(b)  
**in Staten Island.**

**Allegation F – Abuse of Authority: Detective Genaro Barreiro searched** § 87(2)(b)  
**in Staten Island.**

§ 87(2)(b) alleged in both his in-person statement and follow-up phone call that, during the officers' search of the residence for § 87(2)(b) Det. Stuart and Det. Barreiro opened dresser drawers that were inside of § 87(2)(b)'s bedroom that he described were drawers in which clothes are stored (Board Reviews 01 and 06).

§ 87(2)(b) alleged in his unsworn phone statement that approximately three officers began opening the dresser drawers inside of § 87(2)(b)'s bedroom. § 87(2)(b) alleged that there were approximately six officers present during the incident. As previously mentioned, § 87(2)(b) refused to provide a statement to the investigation (Board Reviews 02 and 03).

Both Det. Stuart and Det. Barreiro denied ever entering the house, and Det. Corporan corroborated their testimony. PO Diaz refuted this, testifying that Det. Barreiro did enter the house with him and Det. Corporan. Nonetheless, all four officers denied searching through dresser drawers and denied seeing another officer do so (Board Reviews 04, 05, 07, and 08).

Although § 87(2)(b) a witness, alleged that there were approximately three subject officers to this allegation, he incorrectly attested to there being six officers present while it is known to the investigation that only four were present. Also, § 87(2)(b) the complainant and victim to these allegations, only identified Det. Stuart and Det. Barreiro as being subjects to these allegations. Therefore, because § 87(2)(b) testimony regarding the amount of officers and their specific actions is not credible, and because § 87(2)(b) identified only two officers as subjects to this allegation, search allegations are only being pleaded against Det. Stuart and Det. Barreiro. Further, this search allegation is being pleaded and analyzed separately from Allegation D because the dresser drawer was described as being an area in which clothes were stored, and not an area in which a person could fit, which is outside the scope of the warrant.

§ 87(2)(b), § 87(2)(g)

**Mediation, Civil, and Criminal Histories**

- This case was suitable for mediation, but § 87(2)(b) declined to mediate.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 14).
- As of November 7, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 15).

### **Civilian and Subject Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 16).
- PO Diaz has been a member-of-service for eight years, and has been a subject in four CCRB complaints and 14 allegations, none of which have been substantiated. § 87(2)(g)
- Det. Stuart has been a member-of-service for 17 years, and has been a subject in 11 CCRB complaints and 23 allegations, none of which have been substantiated. Det. § 87(2)(g)
- Det. Barreiro has been a member-of-service for seven years, and has been a subject in 14 CCRB complaints and 28 allegations, none of which have been substantiated. Det. § 87(2)(g)

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Squad No.: 12

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date